IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4731 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MINABEN MUKESHBHAI MODI W/O. DETENU MUKESH @ MUKESH DADHI

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

Mr. K.T. Dave, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 08/02/2000

ORAL JUDGEMENT

Leave granted to the petitioner to correct the name of the spelling of the name of detenu.

Heard learned Advocate Mr. N.M. Kapadia for the

petitioner and learned A.G.P. Mr. K.T.Dave, on behalf of the respondents nos.1, 2 and 3.

1. The detention order dated 9-6-1999 passed by the Commissioner of Police,Surat (the respondent no.1) against the detenu-Mukesh alias Mukesh Dadhi Champaklal Modi in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985("PASA" for short) is challenged in the present petition filed by one Minaben Mukeshbhai Modi-the wife of the detenu under Article 226 of the Constitution of India.

2. The grounds of detention served and supplied to the detenu under Sec.9(1) of "PASA" , copy of which is produced at running page 23 inter alia indicate that a prohibition case vide Cr no.303/99 was registered against the detenu on 2-5-1999 at Rander Police Station and Indianmade foreign liquor has been seized from the possession of the detenu. That the detenu was released on bail on 4-5-1999 and the matter is pending investigation.

2.1 The grounds of detention further indicate that two witnesses on assurance of their anonymity have given statements dated 3-6-1999 regarding bootlegging activities of the detenu and have related the alleged incidents dated 27-5-1999 and 2-6-1999 respectively.

3. That in consideration of the aforesaid material, the respondent no.1 as detaining authority has come to the conclusion that the detenu is a "bootlegger" within the meaning of Section 2(b) of " PASA". That resort to general provisions of law being insufficient to prevent the detenu from continuing his antisocial activity and as such, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended on behalf of the detenu at the Bar that impugned order suffers from the vice of non application of mind inasmuch as the document supplied to the detenu alongwith the order of detention contained a statement of witness-Mukesh alias Mukesh Dadhi Champaklal recorded by Police Sub-Inspector Rander Police Station dated 3-4-1999. That the said statement is described as statement dated 3-5-1999 in the index supplied with the bunch of documents. That on account of said discrepancy detenu made representation dated 23-6-1999 to the State Government and claimed copy of the statement mentioned at item no.14 of the index-the statement of Mukesh alias Mukesh Dadhi Champaklal. That

the State Government forwarded the said representation to the detaining authority who in turn vide his covering letter dated 2-7-1999 returned the same to the State Government stating that the detention order having been approved, it can be considered by the State Government. That vide communication dated 2-7-1999, the State Government intimated the detenu that his representation has been rejected. Thus, despite the representation there is neither clarification nor is the detenu supplied with the copy of the said statement dated 3-5-1999.

Learned Advocate Mr. N.M. Kapadia has urged that on account of said non clarification or non supply of relevant document, the detenu is deprived of an opportunity of making effective representation which amounts to violation of constitutional mandate under Article 226 of the Constitution, and as such, the continued detention of the detenu has become illegal.

Learned AGP Mr. K.T. Dave has attempted to salvage the issue by submitting that copy of the statement of witness Mukesh alias Mukesh Dadhi Champaklal Modi purported to be recorded on 3-4-1999 is a document where by mistake Police Sub Inspector has put the date 3-4-1999 instead of 3-5-1999. That the said document has been correctly described in the index as the statement dated 3-5-1999 and that such a mistake could not have deprived the detenu of his right to make effective representation. The submission though made with utmost force could hardly be accepted in the context of proposition of law that a detenu should be provided with a document claimed by him or necessary clarification should have been sent to him otherwise it would amount to violation of the constitutional mandate under Article 22(5). That the reply vide communication dated 2-7-199 by the detaining authority as well as by the Section Officer of Home, Department(Special), State of Gujarat to the representation dated 23-6-1999 of the detenu is devoid of any explanation. They have also not supplied the correct copy of the statement of witness with the date as of 3-5-1999. In the said facts and circumstances, it is difficult to accept the submission of Mr. Dave, learned A.G.P. and uphold the validity of the order.

7. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

8. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention

dated 9-6-1999 passed by the Commissioner of Police, Surat (respondent no.1) against the detenu is hereby quashed and set aside. The detenu-Mukesh alias Mukesh Dadhi Champaklal Modi is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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